D.B. CIVIL SPECIAL APPEAL (W) NO.886/06
(Krishna Murari Vs. Appellate Rent Tribunal & Ors.)

Date of order : 13.12.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. K.K. Bissa, for the appellant.
Mr. Rajendra Mehta, for caveator.

We have heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dated 2.11.2006, which records that 'at this stage, learned counsel for the petitioner prays for grant of sufficient time to vacate the premises'.

Considering this request, the learned Single Judge gave the present appellant one years time for vacating the premises provided he files an undertaking before the trial court that in the meanwhile he shall continuously pay or deposit the mesne profits at the rate of last paid rent and/or arrears of rent, if any; that he shall not part with possession or otherwise create any third party rights in the disputed property during this period and shall undertake to deliver the

vacant and peaceful possession of the disputed premises on or before completion of one year. The undertaking was to be filed before the trial court within a period of one month from the date of passing of the judgment.

Since, the judgment starts with expression “at this stage”, learned counsel contends that the learned Single Judge has not passed any order in respect of other contentions raised before the learned Single Judge and it was by way of alternative relief and the petition was not decided on merit.

Learned counsel for the parties contends that the merit of the case may be seen at this stage.

From the perusal of the material, it appears that the Rent Tribunal as well as the Appellant Tribunal has concurrently reached the finding about the existence of reasonable and bonafide necessity of the land lord to occupy the suit premises for the business to be set up by his sons. The finding of bonafide necessity being a finding of fact is not liable to be reviewed in exercise of extra ordinary jurisdiction until it can be said to be perverse being founded on no material or by taking into consideration the irrelevant material or by ignoring the relevant material. However, no such grounds that vitiates the finding of fact and merit or an error apparent on the

face of record have been made. The finding of fact is based on material placed before the trial court in the form of affidavits and the cross-examination of applicant as well as witnesses on their affidavits.

It appears that because of this settled position, the alternative prayer was made before the learned Single Judge and that has been granted by him.

It has further been contended by the learned counsel for the appellant that he has challenged the determination of the standard rent under the Rajasthan Land Control Act, 2001 and that has also not been decided but from the perusal of the order passed by learned Single Judge, it appears to us that as a condition for holding the possession of the suit property for one year, the appellant tenant was required to pay mesne profits at the rate of last paid rent. Apparently, this could only be referred to the agreed rent and not the rent to be determined by the court as uptill now he has paid ent only as per agreement. Learned counsel for the respondents concedes that he would not press for the rent higher in terms of decree than the agreed rent up till the period allowed by the learned Single Judge to vacate the premises. In view thereof, this contention of the learned counsel for the appellant does not survive for consideration as the relief which is sought for determining the standard rent has become part of the

order under appeal.

As a result this appeal fails and is hereby dismissed. No costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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